

D.T.E. 03-76-G

August 20, 2004

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39 and G.L. c. 166, §§ 11 and 12, regarding the failure by several individually named common carriers of telecommunications services to file their annual returns for year 2001 by March 31, 2002, and their annual returns for year 2002 by March 31, 2003, and to pay statutory forfeitures.

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In the Matter of:

Paradigm Communications Corp.

D.T.E. 03-76-11

## I. INTRODUCTION

The Department of Telecommunications and Energy (“Department”) requires that all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” i.e., telecommunications services, must be registered by having an approved tariff on file with the Department as well as a current statement of business operations.

Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-98, at 12 (1994); G.L. c. 159, § 12. All common carriers of telecommunications services within the Commonwealth also must file with the Department annual returns for the year ended December 31 by March 31 of the following year, in a format prescribed by the Department. Annual Returns, D.T.E. 03-76, Vote and Order to Open Investigation at 1 (2004) (“Vote and Order”); Annual Returns, D.T.E. 02-13, Vote and Order to Open Investigation at 1 (2002); G.L. c. 159, §§ 12, 32; G.L. c. 166, § 11.

Any telephone company that neglects to file the required annual return by the deadline forfeits to the Commonwealth five dollars per day for the first 15 days, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the return is filed.

G.L. c. 166, § 12. Further, if the Department determines that a telephone company “unreasonably refuses or neglects to make such return,” the company shall forfeit up to \$500 in additional penalty. Id. If the Department finds that a common carrier has neglected to make returns as required by law, the Department is obligated to present the facts to the Attorney General for enforcement. G.L. c. 159, § 39.

## II. PROCEDURAL HISTORY

On February 3, 2004, the Department opened separate investigations into the failure by 15 telephone companies to file annual returns and pay statutory forfeitures to the Commonwealth for both years 2001 and 2002, and into the failure by an additional 25 telephone companies to file their 2002 annual returns and pay statutory forfeitures. Vote and Order. The Department determined that 15 of these 40 companies were registered during both 2001 and 2002 to provide telecommunications services in the Commonwealth, because, at the time of the Vote and Order, the Department had on file approved tariffs and statements of business operations for these carriers, and the Department had these documents on file during 2001 and 2002. Id. at 1.

The Department opened investigations into the 40 companies, docketing each separately as indicated in Appendix A and Appendix B to this Order.<sup>1</sup> This Order pertains to Paradigm Communications Corp. (“Paradigm”), docket D.T.E. 03-76-11.

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<sup>1</sup> In the Vote and Order, the Department opened investigations regarding Paramount International Telecommunications, Inc. (“Paramount”), docketed as D.T.E. 03-76-12, and TeleCents Communications, Inc. (“TeleCents”), docketed as D.T.E. 03-76-34. However, the Department subsequently discovered that TeleCents had in fact complied with the annual return filing requirement, and did not owe an overdue annual return or statutory forfeitures. Paramount complied with the Notice of Investigation and Hearing (April 21, 2004) by filing its annual returns for 2001 and 2002, each showing no intrastate revenues. The Department notified the companies that they were in compliance, and that it had cancelled the hearings involving TeleCents and Paramount and dismissed both cases. D.T.E. 03-76-34, Hearing Officer Memorandum Re: TeleCents Communications, Inc. (April 30, 2004); D.T.E. 03-76-12, Hearing Officer Memorandum Re: Paramount International Telecommunications, Inc. (May 14, 2004).

Pursuant to notice (“Notice”) duly issued,<sup>2</sup> the Department conducted public and evidentiary hearings in this proceeding on April 14, 2004, and May 25, 2004. No party entered an appearance or filed comments. The evidentiary record in D.T.E. 03-76-11 contains six exhibits.<sup>3</sup> The Department cancelled Paradigm’s tariff and registration on June 21, 2004.

### III. ANALYSIS AND FINDINGS

Paradigm was a registered common carrier of telecommunications services during years 2001 and 2002, because the company had an approved tariff and statement of business operations on file with the Department. D.P.U. 93-98, at 12. Prior to commencing these investigations, the Department granted extensions, in both 2001 and 2002, for filing of annual returns past the March 31 annual deadline without incurring the statutory forfeiture, if the

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<sup>2</sup> The Department sent a Notice of Investigation and Hearing to Paradigm Communications Corp. on February 4, 2004 and April 21, 2004, and published the Notice in the Boston Globe on April 26, 2004.

<sup>3</sup> Exhibit 1 is the company’s statement of business operations, as filed with the Department. Exhibit 2 is the cover page of the company’s tariff, as filed with the Department. Exhibit 3-01 is the July 1, 2002 letter that the Department’s Telecommunications Division sent to the company, extending the 2001 annual return filing deadline to July 22, 2002. Exhibit 3-02 is the August 22, 2003 letter that the Department’s Telecommunications Division sent to the company, extending the 2002 annual return filing deadline to September 19, 2003. Exhibit 4 is the Notice of Investigation and Hearing mailed to the company and returned to the Department as undeliverable. Exhibit 5 is a letter to the Department’s Telecommunications Division from Paradigm Communications Corp., dated December 10, 1999, enclosing a copy of a granted bankruptcy petition from the United States Bankruptcy Court in the Central District of California, dated July 29, 1999.

company filed by the new deadline.<sup>4</sup> For the 2001 annual return, the Department extended the filing deadline for annual returns to July 22, 2002, and notified all telecommunications companies operating in the Commonwealth by certified mail. Id. at 2. For the 2002 annual return, the Department extended the filing deadline to September 19, 2003, and again notified the telecommunications companies by certified mail. Id. To date, Paradigm has not filed a 2001 or 2002 annual return. Moreover, Paradigm has not filed its year 2000 annual return or paid the associated statutory forfeitures for that return, as the Department ordered on September 20, 2002 in D.T.E. 02-13-A<sup>5</sup>; nor has the company filed any annual returns or other documents with the Secretary of the Commonwealth since its initial filing of a Foreign Corporation Certificate in 1997.<sup>6</sup>

The Department served Notice of this investigation and hearing upon Paradigm, advising the company that the Department was investigating the company's neglect to file annual returns and that failure to respond or to produce the information requested in the Notice would lead to adverse findings of fact and orders for corrective action. See Vote and Order at 2-4. Paradigm did not respond to the Notice.

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<sup>4</sup> The Department has the authority to set a deadline for filing annual returns other than March 31 "for good cause shown." G.L. c. 159, § 32.

<sup>5</sup> Paradigm was investigated for failure to file a year 2000 annual return in docket D.T.E. 02-13-22. See D.T.E. 02-13-A.

<sup>6</sup> The Foreign Corporation Certificate Paradigm filed in Massachusetts, dated July 25, 1997, is the only document that Paradigm ever filed with the Secretary of the Commonwealth, according to the database records of the Secretary's Corporations Division, available at [www.corp.sec.state.ma.us/corp/corptest/corpsearchinput.asp](http://www.corp.sec.state.ma.us/corp/corptest/corpsearchinput.asp).

Paradigm informed the Department by letter in December 1999 that its bankruptcy petition in the United States Bankruptcy Court in the Central District of California had been granted, and enclosed a copy of the Court's order of relief (Exh. 5).<sup>7</sup> The Department has had no further communication from the company, and it has failed to respond to the Department's D.T.E. 02-13-A Order and the Department's subsequent notices reminding the company to file its annual returns and comply with regulatory requirements. Because Paradigm was declared bankrupt prior to 2001, has failed to respond to orders and communications from the Department since that time, and has never filed any other documents, including annual returns, with the Secretary of the Commonwealth, there is no indication that Paradigm was operating in Massachusetts in 2001 or 2002, or since then. Furthermore, Paradigm has not provided an updated valid address in association with its tariff. As a result, the Department cancelled the tariff of Paradigm Communications Corp. on June 21, 2004.

Therefore, because we have no evidence that Paradigm has been conducting business in Massachusetts since 2000, we find that Paradigm was not "doing business in the commonwealth" during 2001 and 2002 for purposes of G.L. c. 166, §§ 11, 12. Accordingly, we determine that Paradigm does not owe annual returns for those years and no statutory forfeitures apply. See D.T.E. 02-13-G at 3-4; D.T.E. 02-13-F at 3-5.

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<sup>7</sup> The Department takes administrative notice, pursuant to 220 C.M.R. § 1.10(2), of the Order of Relief and Order to File Schedules and Statement of Affairs of the United States Bankruptcy Court in the Central District of California regarding the bankruptcy of Paradigm Communications Corp. In re: Paradigm Communications Corporation d/b/a Global Communications Network, No. LA99-32275-ER (Bankr. C.D. Cal. July 29, 1999).

IV. ORDER

After notice, hearing, opportunity for comment, and due consideration, it is

ORDERED that the investigation relative to Paradigm Communications Corp. in

D.T.E. 03-76-11 be terminated.

By Order of the Department,

\_\_\_\_\_/s/\_\_\_\_\_  
Paul G. Afonso, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
W. Robert Keating, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Eugene J. Sullivan, Jr., Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).



## APPENDIX A

Telephone companies that failed to file annual returns for years 2001 and 2002

<u>Carrier</u>	<u>Docket Number</u>
ESS.Com, LLC	03-76-1
Euronet Communications Corp.	03-76-2
Gerson Group	03-76-3
Long Distance Billing Services, Inc.	03-76-4
Massachusetts Local Telephone Company	03-76-5
Maxcess, Inc.	03-76-6
Maxtel USA, Inc.	03-76-7
Norstar Communications, Inc.	03-76-8
Ntera, Inc.	03-76-9
Optical Telephone Corporation	03-76-10
Paradigm Communications Corporation	03-76-11
Paramount International Telecommunications, Inc.	03-76-12
Pride America, Inc.	03-76-13
SecurFone America, Inc.	03-76-14
StormTel, Inc.	03-76-15

## APPENDIX B

## Telephone companies that failed to file an annual return for year 2002

<u>Carrier</u>	<u>Docket Number</u>
Americom Technologies	03-76-16
CCMA	03-76-17
Columbia Telecommunications, Inc. d/b/a aXessa	03-76-18
ConnectAmerica, Inc.	03-76-19
Equal Access Communications, LLC	03-76-20
Global Crest Communications, LLC	03-76-21
Globalcom, Inc.	03-76-22
Integrated Communications Consultants	03-76-23
Intelecall Communications, Inc.	03-76-24
LD Exchange.Com, Inc.	03-76-25
Maxxis Communications, Inc.	03-76-26
Natel, LLC	03-76-27
North American Telephone Network, Inc.	03-76-28
PF.Net Network Services Corporation	03-76-29
Power-Finder West Communications, LLC	03-76-30
Radiant Telecom, Inc.	03-76-31
TalkingNets Holdings, LLC	03-76-32
Talk Unlimited Now, Inc.	03-76-33
TeleCents Communications, Inc.	03-76-34
Telis Communications Group, Inc.	03-76-35
Touch America, Inc.	03-76-36
TransNet Connect, Inc.	03-76-37
UKI Communications, Inc.	03-76-38
United States Telecommunications, Inc.	03-76-39
WDT World Discount Telecommunications Company	03-76-40